

**BEFORE
THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

MIF Realty, Inc.
t/a Gangplank Restaurant & Marina

Application for a Retailer's License
Class CR - renewal
at premises

600 Water Street, S.W.
Washington, D.C.

App. No. 9602-97104P

**Linda Eckles, Chair, on behalf of Advisory Commission 2D, and William Whiston,
Board President, on behalf of the Tiber Island Cooperative Homes, Protestants**

Van Dierrer, Esquire, on behalf of Applicant

**BEFORE: BARBARA L. SMITH, ESQUIRE, CHAIR;
DENNIS BASS, MEMBER;
ALLEN BEACH, MEMBER;
MARY EVA CANDON, ESQUIRE, MEMBER;
LAVERNE KING, MEMBER;
EYDIE WHITTINGTON, MEMBER;
DUANE WANG, MEMBER**

ORDER ON A WITHDRAWN PROTEST

The application, having been protested came before the Board for public hearing on August 13, 1997, and was continued until September 10, 1997 in accordance with D.C. Code Section 25-115(c)(5)(1996 Supp.), providing for remonstrants to be heard. Linda Eckles, Chair, on behalf of Advisory Neighborhood Commission 2D, and Bill Whiston, Board President, on behalf of the Tiber Island Cooperative Homes, Inc., file timely protests by letters dated July 18, 1997. However, by letter dated December 26, 1997, Linda Eckles withdrew her opposition.

The official records of the Board reflect that MIF Realty, L.P. t/a Gangplank Restaurant & Marina and Bill Whiston, on behalf of the Tiber Island Cooperative Homes, Inc., have now reached an Agreement which has been reduced to writing, and has been

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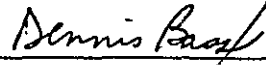
properly executed and filed with the Board. Pursuant to the Agreement dated December 12, 1997, the protestant has agreed to withdraw the opposition, provided however, the Board's approval of the pending application is conditioned.

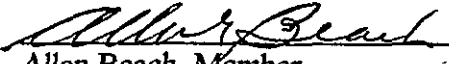
Accordingly, it is this 29 day of April 1998, **ORDERED** that:

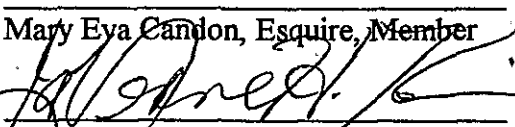
1. The protests of Linda Eckles, Chair, on behalf of Advisory Neighborhood Commission 2D, and Bill Whiston, Board President, on behalf of the Tiber Island Cooperative Homes, Inc., be, and the same hereby, are **WITHDRAWN**;
2. The above-referenced Agreement between the parties, be, and the same hereby, is **INCORPORATED** as part of this Order;
3. The application of MIF Realty, Inc. t/a Gangplank Restaurant & Marina for a retailer's license class CR - renewal at premises 600 Water Street, S.W., be, and the same hereby, is **GRANTED**; and,
4. Copies of this Order shall be sent to the Protestants, the Attorney for the Applicant, and the Applicant.

DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD


Barbara L. Smith, Esquire, Chair


Dennis Bass, Member


Allen Beach, Member

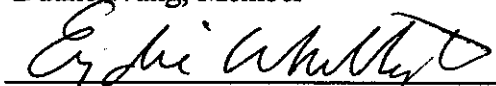

Mary Eva Cannon, Esquire, Member


Laverne King, Member

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Duane Wang, Member



Eydie Whittington

#9602

VOLUNTARY AGREEMENT

Made this 12th day of December, 1997, by and between MIF REALTY, L.P., t/a GANGPLANK RESTAURANT & MARINA ("Applicant") and TIBER ISLAND COOPERATIVE HOMES, INC. ("Protestant")

ALCOHOLIC BEVERAGE
CONTROL DIVISION

WITNESSETH

WHEREAS, Applicant's application for renewal of a Retailers' Class "CR" license for premises at 600 Water Street, S.W., ABC License # 13562, ABC Application # 9602, is now pending before the District of Columbia Alcoholic Beverage Control Board (ABC);

WHEREAS, Protestant has protested the renewal of Applicant's license because of the effect of music played or performed in Applicant's "summer garden" (outdoor patio) upon the peace, order and quiet of the residents of Tiber Island, Case No. 9602-97104P;

WHEREAS, Applicant herein acknowledges its obligation, in accordance with 23 D.C.M.R. Section 905, not to produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed premises by use of any musical instrument or mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise;

WHEREAS, Applicant and Protestant are mutually desirous of reaching an accord as to the performance or playing of music in Applicant's "summer garden" (outdoor patio); and

WHEREAS, Applicant and Protestant conducted an informal sound test on October 23, 1997 which showed that, under the conditions prevailing at the time of the test, music played in Applicant's "summer garden" (outdoor patio) can be heard by Tiber Island residents when the sound level exceeds 80 decibels, as measured by

a sound level meter located at the southeast corner of the stationary bar in Applicant's "summer garden" (outdoor patio);

NOW THEREFORE, the parties hereto agree as follows:

1. MAXIMUM SOUND LEVEL.

(A) The parties agree that the following definitions shall apply to this Agreement:

(1) decibels - a measure of sound pressure level obtained from a sound level meter using the A-weighting network or filter, as specified in ANSI-1.4-1971 or the latest approved revision of that standard;

(2) ANSI - the American National Standard Institute or its successor bodies; and

(3) maximum sound level - the highest level observed on a sound level meter;

(B) Applicant agrees to ensure that the sound level in its "summer garden" (outdoor patio) shall not exceed a maximum sound level of 80 decibels, when measured by a sound level meter maintained at the southeast corner of the stationary bar structure located in Applicant's "summer garden" (outdoor patio);

(C) Protestant agrees to notify Applicant's designee if and when the music performed or played in Applicant's "summer garden" (outdoor patio) can be heard by Tiber Island residents, despite the 80 decibel sound level limit; and Applicant agrees that, upon such notification, Applicant's designee shall cause the volume of the music shall be lowered to the point where the music cannot be heard by Tiber Island residents; and

(D) If Applicant's designee is required to cause the volume of the music to be lowered more than three times during a one month period, in order to prevent the music performed or played in its "summer garden" (outdoor patio) from being heard by Tiber Island residents, Applicant agrees that the maximum sound level of 80 decibels shall be reduced to a lower maximum sound level which will ensure that music performed or played on Applicant's "summer garden" (outdoor patio) cannot be heard by Tiber Island residents; and Applicant and Protestant both agree to cooperate and participate in the establishment of the new maximum sound level.

2. IMPLEMENTATION.

(A) Applicant shall cause a device to be installed and/or utilized which shall ensure that the persons who manage, and the persons who perform or play music in, Applicant's "summer garden" (outdoor patio) can easily ascertain, and are aware of, the sound level in the summer garden (outdoor patio) at all times that music is being performed or played therein;

(B) Applicant shall ensure that the persons who manage Applicant's "summer garden" (outdoor patio) receive a copy of this agreement and understand its prohibitions on noise;

(C) Applicant shall ensure that any individuals or organizations who rent its licensed premises receive a copy of this Agreement and are required to comply with its prohibitions on noise;

(D) Applicant shall require any lessee of the licensed premises to operate in accordance with the provisions of this Agreement; and

(E) Applicant will take all other reasonable and prudent measures to ensure that the music performed or played in Applicant's "summer garden" (outdoor patio) cannot be heard by Tiber Island residents.

3. EFFECTIVE DATE. This Agreement shall become effective upon the year and date first above-written.

4. REMEDIES.

(A) The parties agree that any failure of Applicant to comply with the foregoing covenants and promises shall constitute grounds for Protestant to petition the ABC Board for issuance of an order to show cause why Applicant's license should not be suspended or revoked, pursuant to 23 D.C.M.R. Section 1513.5; and

(B) In addition, in the event of any failure to comply with the foregoing covenants and promises, this Agreement shall not preclude Protestant from challenging Applicant's compliance with any other District of Columbia laws or regulations not covered in this Agreement.

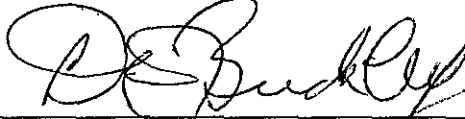
5. WITHDRAWAL OF PROTEST.

In consideration of, and in reliance upon, the above-stated covenants and promises, and with the understanding that such stated conditions will be made part of Applicant's above-described ABC license, Protestant does hereby withdraw its objections to Applicant's pending application for renewal of the license.

IN WITNESS WHEREOF, the parties have affixed hereto their hand and seals as of the year and date first above-written.

FOR APPLICANT:

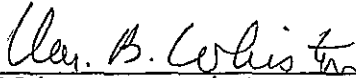
MIF REALTY, L.P.,
t/a GANGPLANK RESTAURANT & MARINA



Damian Buckley, VP Operations
Marina Management Services, Inc.
For and on behalf of MIF Realty, L.P.
t/a Gangplank Restaurant & Marina

FOR PROTESTANT:

TIBER ISLAND COOPERATIVE HOMES, INC.



William B. Whiston
Board President
Tiber Island Cooperative Homes, Inc.